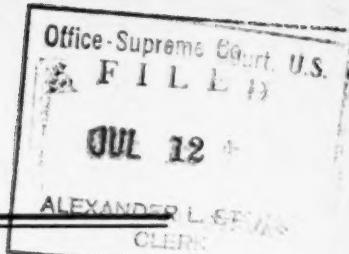


No. 82-2037



In the Supreme Court of the United States

OCTOBER TERM, 1983

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JOHN CASTANO, PETITIONER

v.

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT*

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MEMORANDUM FOR THE UNITED STATES  
IN OPPOSITION

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REX E. LEE  
*Solicitor General*  
*Department of Justice*  
*Washington, D.C. 20530*  
*(202) 633-2217*

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Petitioner contends that the court of appeals erred in concluding that he waived his Fifth Amendment right to silence when he made a custodial statement.

In June 1981 petitioner was charged in a superseding indictment returned in the United States District Court for the Southern District of Florida with possession of cocaine with intent to distribute and distribution of cocaine, both in violation of 21 U.S.C. 841(a)(1), and with conspiracy to possess with intent to distribute and to distribute cocaine, in violation of 21 U.S.C. 846.<sup>1</sup> Before trial, petitioner moved to suppress statements that he gave to a DEA agent following arrest and subsequent to receipt of *Miranda* warnings.

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<sup>1</sup>The original indictment was returned in April 1981.

After a hearing, a magistrate recommended denial of the motion, finding that petitioner's statements were spontaneous and not pursuant to any question, threat, or coercion of any kind. On November 30, 1981, the district court adopted the magistrate's finding of fact but disagreed with his conclusion of law and suppressed the statements. Noting that petitioner had explicitly refused to waive his *Miranda* rights, the court found that the government had failed to carry its burden of proving that petitioner had waived his right to remain silent (Pet. App. 12-13). The court of appeals reversed, relying in part on *North Carolina v. Butler*, 441 U.S. 369 (1979) (Pet. App. 2-10). It found that petitioner had volunteered the incriminating statements without being questioned and that "the totality of the circumstances indicate[d] that \* \* \* [the] statements were voluntarily and freely made" (Pet. App. 10).

Petitioner contends (Pet. 5-10) that the court of appeals erred in concluding that he waived his right to silence following his arrest.<sup>2</sup> Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment.

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<sup>2</sup>Unlike the respondent in *Oregon v. Bradshaw*, No. 81-1857 (June 23, 1983), petitioner makes no claim that he invoked his right to an attorney.

against him.<sup>3</sup> Accordingly, review by this Court of the court of appeals' decision would be premature at this time.<sup>4</sup>

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE  
*Solicitor General*

JULY 1983

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<sup>3</sup>It is now more than two years since the return of the superseding indictment and 19 months since the district court's suppression order. Further interlocutory review at this time would cause additional delay in trial of the charges against petitioner.

<sup>4</sup>Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.